IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY THIRD DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO.7689 of 2001

Between:

Harwant Singh S/o.Jaswanth Singh,
C/o.Aman Bulk Carrier, Transportnagar , Kathoj , Bhilal Madhya Pradesh.

...PETITIONER

AND

1. Government of Andhra Pradesh, Prohibition & Excise, Revenue (Excise-III) Department, rep.by its Officer on Special Duty, Secretariat, Hyderabad.
2. The Commissioner of Prohibition & Excise, Andhra Pradesh, Opp.to Gandhi Bhavan, Nampally, Hyderabad.
3. The Deputy Commissioner of Prohibition & Excise, Kakinada, East Godavari District.
4. The Prohibition and Excise Inspector, Tadepalligudem, West Godavari District.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to May be pleased to issue a writ of Mandamus or any other appropriate writ, order or direction and to set-aside the impugned G.O.Rt.No.754 Dt: 6-4-2001 therein dismissed the Revision Petition by upholding the orders of Confiscation of Vehicle bearing No.M.P.24-c 2689 passed by the respondents is highly illegal, arbitrary and violation of Principles of Natural Justice and contrary to the judgments of the Apex Court reported in AIR 1997 SC 1017 and consequently to direct the respondents

release the Lorry Tanker bearing No.M.P.24-C 2689.

Counsel for the Petitioner: MR.B.P.RAJU

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

The Court made the following:

ORDER:

On 13.06.1997 the lorry of the petitioner bearing No.MP 24 C 2689 was intercepted near Kanaka Durgamma Temple in Prathipadu Village, of Pentapadu Mandal, West Godavari District and on inspection, was seen to be transporting 19,200 bottles of non-duty paid liquor. The contraband liquor was seized, as was the lorry. One person in the lorry was also arrested and on questioning, revealed his identity as one Balaram Godsey. The investigation revealed that there was no permit or licence for transportation of the liquor. A case was registered by the concerned Excise Inspector and proposals submitted for confiscation of the seized property. After a due process of enquiry, by the proceedings of the Deputy Commissioner, Prohibition & Excise, Kakinada dated 25.11.1999, the petitioner's lorry was ordered to be confiscated.

2. Without an application seeking condonation of delay, the petitioner filed an appeal dated 17.04.2000 before the second respondent-Commissioner of Prohibition & Excise, Hyderabad. The appeal was rejected by the order dated 02.06.2000 on the ground that it was filed belatedly and without setting out sufficient reasons for condoning the delay. Aggrieved thereby, the petitioner preferred a revision to the State Government on 02.09.2000, which was also rejected by the order impugned herein dated 06.04.2001 in G.O.Rt.No.754 Revenue (Excise.III)

Department.

3. The consistent refrain of the petitioner before the Deputy Commissioner, the Commissioner and the State Government was that he was not aware that contraband liquor was being transported, that his lorry was used in the transportation of a petroleum product, “slobe oil” from Bilaspur in Madhya Pradesh to Chennai. As per the normal practice, the empty vehicle was to return from Chennai to Bilaspur without any load, as the vehicle was an oil tanker. However, without his knowledge, permission or intimation, the driver of the lorry appears to have permitted a passenger to carry the contraband liquor. The theme song of the petitioner is that he was unaware and there was no *mens rea* to carry contraband liquor. The penalty of confiscation of his lorry is to his detriment and was unjust in the circumstances.

4. A Division Bench of this Court in ***Shaik Gulam Rasool v. Govt.of A.P.*** has held that unless the owner of the vehicle is found to have knowledge of the alleged offence under the Excise Act (A.P.Excise Act, 1968), orders of confiscation of a vehicle cannot be issued and that no presumption can be imputed qua the provisions of the Act, against the owner of the vehicle for the acts done by the servant and that the *mens rea* of the owner would have to be established. Though in the judgment, it is stated that once the *prima facie* offence/transgression the provisions of the Act is established, the burden shifts on the owner to prove absence of *mens rea* regarding the transportation of the contraband liquor.

5. As none of the primary, appellate or revisional orders had considered this aspect of the matter, in the context of legal principle spelt out in ***Shaik Gulam Rasool v. Govt.of A.P.***(supra), this Court considers it appropriate that the matter should be

considered in the light of the law declared in the judgment of this Court in ***Shaik Gulam Rasool v. Govt.of A.P.*** (supra).

6. Accordingly, the order of the first respondent-State Government dated 06.04.2001 in G.O.Rt.No.754 Revenue (Excise.III) Department is set aside. The first respondent is directed to consider the revision petition of the petitioner *de novo* in the light of the law declared by this Court in ***Shaik Gulam Rasool v. Govt.of A.P.*** (supra). As the lorry of the petitioner is under confiscation for over five years, since the year 1999, the first respondent is directed to expeditiously consider and dispose of the revision, preferably within three months from the date of receipt of a copy of this order.

7. The Writ Petition is accordingly disposed of. No order as to costs.

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(GODA RAGHU RAM, J)

23rd November 2004

RRB

ASSISTANT REGISTRAR

//True Copy//

SECTION OFFICER

Copy To:

1. The Officer on Special Duty, Government of Andhra Pradesh, Prohibition &

Excise, Revenue (Excise-III) Department, Secretariat, Hyderabad.

2. The Commissioner of Prohibition & Excise, Andhra Pradesh, Opp.to Gandhi Bhavan, Nampally, Hyderabad.

3. The Deputy Commissioner of Prohibition & Excise, Kakinada, East Godavari District.

4. The Prohibition and Excise Inspector, Tadepalligudem, West Godavari District.

5. Two CCs to G.P. for Prohibition & Excise, High Court Buildings, Hyderabad (OUT).

6. Two CD copies.